Crl. Misc. No. 3362-M of 2007

Present: Mr. J.S. Gill, Advocate,
for the petitioner.

Ms. Rita Kohli, AAG, Punjab.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. I.S. Sidhu, Advocate for the complainant.

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Heard learned counsel for the parties.

The petitioner seeks pre-arrest bail in a case registered against him for the offence under Sections 406 and 420 IPC. By an Order dated 19.01.2007, the petitioner was granted interim bail.

The dispute between the parties relates to the sale of plot/house No. 2163, Phase-II, Urban Estate, Dugri Road, Ludhiana ad measuring 400 sq. yards. An Agreement to Sell dated 20.9.2005 (Annexure P-1) was executed between the petitioner and the complainant Gurpreet Singh and his brother Gurbhej Singh. In terms of the said agreement (Annexure P-1), it was inter alia agreed that the aforesaid plot/house would be sold for a sale consideration of Rs.54,25,000/- and a sum of Rs. 10,25,000/- was received as earnest money, the receipt of which is acknowledged. The sale deed was to be executed by the petitioner in favour of the vendees by 20.03.2006. It was also agreed that the vendees shall bear the expenses for registration. The complainant on 1.02.2006 paid a further sum of Rs. 5 lacs to the petitioner as earnest money, which was in addition to the sum of Rs.10.25 lacs earlier paid. Accordingly, an endorsement was made on the reverse of the first page of the agreement (Annexure P-1) with regard to the receipt of a sum of Rs.5 lacs more on 1.2.2006. The petitioner gave this amount of Rs. 5 lacs to the State Bank of Hyderabad as the aforesaid house/plot was hypothecated to the Bank towards a loan that he had taken. The State Bank of Hyderabad on 1.2.2006 (Annexure P-2) certified that the loan has

been closed and no dues are pending to the Bank. By another letter also dated 1.2.2006 (Annexure P-3), the aforesaid Bank advised the petitioner that the original title deeds of his house were with the CBI, New Delhi, which had been handed over to them for investigation.

Learned counsel for the petitioner has submitted that in a case registered against the then Manager of the State Bank of Hyderabad, the CBI had taken possession of the title deeds in respect of the loan that had been advanced during that period by the then Manager. In these circumstances, the title deed of the property of the petitioner was also taken by the CBI, New Delhi. In any case, it is submitted that it is not in dispute between the parties that the date for execution of the sale deed was extended from 20.3.2006 to 31.3.2006. On 15.03.2006, an endorsement in this regard, which was again made on the reverse of the first page of the agreement (Annexure P-1). According to the petitioner, the complainant did not execute the sale deed on 31.3.2006, even though the petitioner was present in the Office of Sub-Registrar, Ludhiana for the purpose of execution of the sale deed. The complainant, however, has taken a stand that he was also present in the office of Sub-Registrar, Ludhiana and had got himself marked present. This, according to the learned counsel for the petitioner, had been got done by the complainant after the petitioner had left, otherwise the Sub-Registrar, Ludhiana would have called both the parties and asked them to execute the sale deed. In any case, with respect to the dispute as regards the Agreement to Sell, the petitioner on 21.07.2006 filed a suit for declaration to the effect that the Agreement to Sell dated 20.9.2005 (Annexure P-1) stood rescinded and cancelled and earnest money forfeited. Besides for permanent injunction restraining the complainant and his partner from forcibly dispossessing the petitioner from the property. The said suit is pending before

the learned Civil Judge (Senior Division), Ludhiana. It is submitted that the complainant has also filed a counter claim praying for grant a decree for possession by way of specific purpose of the Agreement to Sell dated 20.09.2005 (Annexure P-1). The said counter claim is also pending. It is thereafter, the complainant has lodged the present F.I.R. The petitioner in fact had earlier filed an application before the learned Additional Sessions Judge, Ludhiana praying for pre-arrest bail which was disposed of vide Order dated 25.11.2006 by observing that no case had been registered against him. Besides, in case the police wanted to arrest the petitioner, he be given three days prior notice. After passing of the Order by the learned Additional Sessions Judge, Ludhiana on 25.11.2006, the F.I.R. dated 27.11.2006 had been registered.

After hearing learned counsel for the parties and perusing the record, it may be noticed that on 30.03.2006 the complainant is alleged to have given a sum of Rs.5 lacs to the petitioner for the purposes of purchase of stamps. In this regard, it may be noticed that in terms of the agreement dated 20.9.2005, the expenses for registering the sale deed were to be borne by the vendees. Therefore, it is to be considered after evidence is led as to whether the said sum was given or not. In any case, it is not in dispute that there is no writing or other material on record with regard to the payment of Rs.5 lacs by the petitioner on 30.3.2006. A writing is there on the reverse of the first page of the agreement dated 20.9.2005 (Annexure P-1) with regard to the payment of Rs.5 lacs on 1.2.2006. Besides, the extension of date for execution of the sale deed is also duly mentioned. However, there is nothing with regard to the payment of Rs.5 lacs for the purchase of stamp papers. This aspect requires the leading of evidence. Therefore, in the circumstances, the dispute between the parties is to be gone into and considered after evidence has been led. It

would be pre-mature at this stage to comment either way, as to whether a criminal liability can be fastened on the petitioner or not.

Learned counsel for the State and the complainant have, however, laid considerable stress on the fact that on the date fixed for the execution of the sale deed i.e. 31.3.2006, the petitioner did not have the original title deeds of the property. It is submitted that as per the petitioner's own case the sale deed of title was obtained by him on 11.5. 2006. This aspect in any case would not warrant the custodial interrogation of the petitioner and its effect would be gone into by the Court after evidence has been led.

Keeping in view the facts and circumstances and also the fact that a civil suit and a counter claim are pending between the parties, it would be just and expedient to confirm the interim bail granted to the petitioner vide Order dated 19.1.2007.

Consequently, Criminal Miscellaneous Petition is allowed and the interim bail granted on 19.1.2007 is made absolute subject to the provisions of Section 438 Cr.P.C.

(S.S. SARON)
JUDGE

16.08.2007
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